

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emily Devaney	Team: Squad #4	CCRB Case #: 201910127	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/23/2019 9:00 PM	Location of Incident: § 87(2)(b)	Precinct: 34	18 Mo. SOL 4/23/2021	EO SOL 12/8/2021	
Date/Time CV Reported Thu, 11/21/2019 12:38 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 11/21/2019 12:38 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Mohammad Khan	27221	957734	034 PCT
2. POF Tiffany Sanchez	21647	959966	034 PCT
3. SGT Todd Shea	04356	951241	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kevin Santiago	07944	963745	034 PCT
2. POM Saul Rodriguezcarrasco	00000	967667	REC TNG
3. POM Kenneth Vairo	19825	966894	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Mohammad Khan	Abuse: Police Officer Mohammad Khan threatened to damage § 87(2)(b)'s property.	§ 87(2)(b)
B.POM Mohammad Khan	Abuse: Police Officer Mohammad Khan threatened to arrest § 87(2)(b)	§ 87(2)(b)
C.POM Mohammad Khan	Abuse: Police Officer Mohammad Khan entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
D.SGT Todd Shea	Abuse: Sergeant Todd Shea threatened to arrest § 87(2)(b)	§ 87(2)(b)
E.POF Tiffany Sanchez	Abuse: Police Officer Tiffany Sanchez entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
F.POM Mohammad Khan	Abuse: Police Officer Mohammad Khan threatened to arrest § 87(2)(b)	§ 87(2)(b)
G.SGT Todd Shea	Abuse: Sergeant Todd Shea entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
H.POM Mohammad Khan	Abuse: Police Officer Mohammad Khan questioned § 87(2)(b)	§ 87(2)(b)
I.SGT Todd Shea	Abuse: Sergeant Todd Shea questioned § 87(2)(b)	§ 87(2)(b)
J.POM Mohammad Khan	Abuse: Police Officer Mohammad Khan searched § 87(2)(b)	§ 87(2)(b)
K.SGT Todd Shea	Abuse: Sergeant Todd Shea searched § 87(2)(b)	§ 87(2)(b)

Case Summary

On November 21, 2019, § 87(2)(b) filed this complaint in-person at the CCRB.

On October 23, 2019, at approximately 9:00 p.m., § 87(2)(b) was in her apartment at § 87(2)(b) when she heard a knock on the door. § 87(2)(b) looked through the peephole in the door and saw multiple officers, including Police Officer Mohammed Khan of the 34th Precinct. PO Khan told § 87(2)(b) to open the door or else he would break the door and arrest § 87(2)(b) (**Allegation A: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) opened the door, and PO Khan entered the apartment (**Allegation C: Abuse of Authority**, § 87(2)(g)). Sergeant Todd Shea of the 34th Precinct arrived and threatened to arrest § 87(2)(b) if she did not leave (**Allegation D: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) went into her apartment, and Police Officer Tiffany Sanchez of the 34th Precinct followed her inside (**Allegation E: Abuse of Authority**, § 87(2)(g)). PO Khan threatened to arrest § 87(2)(b) a second time (**Allegation F: Abuse of Authority**, § 87(2)(g)). Sgt. Shea told § 87(2)(b) again that she needed to leave and crossed the threshold into the entryway of her apartment (**Allegation G: Abuse of Authority**, § 87(2)(g)). As § 87(2)(b) was leaving the apartment, PO Khan and Sgt. Shea asked what was in her bag and if they could check inside (**Allegation H-I: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) opened her bag and displayed the contents for PO Khan and Sgt. Shea (**Allegations J-K: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) left the premises.

The investigation obtained body-worn camera (BWC) videos from the subject and witness officers (Board Review 01-07). The investigation also obtained surveillance footage from the building at § 87(2)(b) in Manhattan (Board Review 08-09).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Mohammad Khan threatened to damage § 87(2)(b)'s property.

Allegation (B) Abuse of Authority: Police Officer Mohammad Khan threatened to arrest § 87(2)(b).

Allegation (C) Abuse of Authority: Police Officer Mohammad Khan entered § 87(2)(b).

It is undisputed that both § 87(2)(b) and her son, § 87(2)(b), have valid orders of protection against each other. It is also undisputed that § 87(2)(b) and her son reside in the abovementioned apartment (Board Review 10). § 87(2)(a)

§ 87(2)(b) ordered that § 87(2)(b) stay away from § 87(2)(b) and the home of § 87(2)(b) until April 22, 2020. § 87(2)(a)

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§ 87(2)(b) ordered that § 87(2)(b) stay away from § 87(2)(b) and the home of § 87(2)(b) until October 29, 2019.

§ 87(2)(b) testified that a few hours prior to this incident, she changed the lock on the apartment door, per her attorney (Board Review 11). Later, she found what she believed was crack cocaine in her apartment, and she believed it belonged to § 87(2)(b). § 87(2)(b) called the 34th Precinct non-emergency line to report the substance she found. Shortly after, § 87(2)(b) heard a knock at the door and looked through the peephole to see PO Khan, whom she recognized from a previous encounter. PO Khan told § 87(2)(b) through the door that § 87(2)(b) obtained a new order of protection excluding her from the apartment. PO Khan told § 87(2)(b) to open the door multiple times, and each time § 87(2)(b) refused. PO Khan said, "Please open the door. I don't want to have to arrest you. If you don't open the door, I will be calling so they can break the door down. If I

break the door, you're definitely getting arrested." § 87(2)(b) was afraid she would be arrested and lose her job with the city. § 87(2)(b) opened the door and showed PO Khan the order of protection she had against § 87(2)(b).

PO Khan testified that he told § 87(2)(b) and § 87(2)(b) that they could be arrested if either of them committed actions against their orders of protection (Board Review 12). PO Khan told them this as a matter of fact to inform them of the procedure in cases that involved violating orders of protection. PO Khan did not recall if he told § 87(2)(b) that he would break the door down if she did not open it. Neither PO Khan nor any other officer entered the apartment.

The body-worn camera (BWC) video from PO Khan showed this interaction beginning at the 00:36 minute-mark of the player's timestamp (Board Review 01). At the beginning of the recording, PO Khan is standing outside the building with PO Rodriguez-Carrasco and § 87(2)(b). § 87(2)(b) opens the door of the building and leads the officers inside and up the stairs. § 87(2)(b) sits on the staircase while PO Khan and PO Rodriguez-Carrasco approach § 87(2)(b). At the 00:36 minute-mark, PO Khan knocks on the apartment door. PO Khan says, "It's Khan. Officer Khan." § 87(2)(b) who is inside the apartment, says, "The sergeant sent you? I have 911 on the phone." PO Khan replies, "The sergeant didn't send me. Can you open the door please?" § 87(2)(b) says something unintelligible from inside the apartment. At 00:58, PO Khan says, "Can you open the door please? Can you just open the door? We gotta talk to you. There's an order of protection that you can't be in this apartment." § 87(2)(b) replies, "Yes, I have an order of protection. He can't be in here. I got in here first." PO Khan asks to see § 87(2)(b)'s order of protection. PO Khan turns to § 87(2)(b) who is sitting on the staircase. § 87(2)(b) hands PO Khan a piece of paper and says that both he and § 87(2)(b) have orders of protection against each other. At 2:06, § 87(2)(b) tells PO Khan through the door that she is on the phone with 911 because she found crack in her apartment. § 87(2)(b) says that a sergeant told her to call 911 about the crack and that she was on the phone when PO Khan arrived. PO Khan asks § 87(2)(b) multiple times to open the door and show her order of protection. § 87(2)(b) replies that she will not open the door because she does not trust that officers will not come into her apartment and arrest her like they did in June. At 3:58, PO Khan says, "I have the keys to the apartment." § 87(2)(b) replies, "Ok, my lawyer told me I could change the lock because he cannot enter the apartment--" PO Khan interjects, "Let me see the order of protection." At 5:22, PO Khan says, "If I call the supervisor, right now, he comes into the location, you're gonna get arrested one more time." § 87(2)(b) says, "Why would I get arrested? I'm not in violation." PO Khan replies that § 87(2)(b) has an order of protection. At 5:45, § 87(2)(b) opens the door and says, "Come inside, Officer Khan." § 87(2)(b) unfolds a piece of paper and says, "Look. Come inside. Come. Come inside." PO Khan steps in the doorway. The BWC did not capture PO Khan threatening to have the door broken down.

After viewing this clip from his BWC, PO Khan stated that § 87(2)(b) would have been arrested if she did not open the door (Board Review 12). When asked if § 87(2)(b) was committing an arrestable offense, PO Khan stated that § 87(2)(b) could have been arrested for an illegal eviction since she did not allow § 87(2)(b) into the apartment, or for criminal contempt for violating an order of protection. § 87(2)(b) was not doing anything else she could have been arrested for. PO Khan still did not recall crossing the threshold of the apartment, but, after viewing his BWC, PO Khan believed he entered the threshold of the apartment so that he could read her order of protection and because § 87(2)(b) told him to.

New York City Administrative Code §26-521 states that it is unlawful for any person to evict or attempt to evict an occupant of a dwelling unit by engaging in conduct which prevents an occupant from occupying such dwelling, except to the extent permitted by law pursuant to a warrant of eviction or other order of a court of competent jurisdiction (Board Review 14).

New York Penal Law §215.50 states that a person is guilty of criminal contempt in the second degree when they engage in the intentional disobedience or resistance to the lawful mandate of a court (Board Review 15).

According to Payton v. New York (445 U.S. 573), officers are prohibited from making warrantless entry into an individual's home without consent (Board Review 16). In addition, consent must be a free and unconstrained choice, per People v. Gonzalez, 39 N.Y.2d 122 (Board Review 17). Whether consent has been voluntarily given or is only a yielding to overbearing official pressure must be determined from the circumstances. The presence of official coercion nullifies consent.

Based on the BWC video, it is clear that PO Khan did not tell § 87(2)(b) that he would have the door broken if she did not open it. § 87(2)(g)

The BWC video also shows that § 87(2)(b) told the officers that she changed the locks to the apartment door. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) PO Khan stated that he entered § 87(2)(b)'s apartment because she told him to and to read § 87(2)(b)'s order of protection. BWC footage captures PO Khan repeatedly asking § 87(2)(b) to open the door to the apartment, telling § 87(2)(b) that he has the keys to the apartment, and saying that if he calls the sergeant she will get arrested again. § 87(2)(b) only then opens the apartment door and tells PO Khan to enter the apartment. § 87(2)(g)

Allegation (D) Abuse of Authority: Sergeant Todd Shea threatened to arrest § 87(2)(b)

§ 87(2)(b) testified that Sgt. Shea arrived and told her that he spoke with the NYPD Legal Department over the phone (Board Review 11). Sgt. Shea told § 87(2)(b) she had to leave the apartment. § 87(2)(b) refused, and Sgt. Shea said, "We're going to be here all night. I don't want to arrest you, but if you give me a hard time, I'll have no choice but to arrest you for resisting leaving your apartment." § 87(2)(b) retreated into the apartment to collect her belongings.

Sgt. Shea's BWC video showed that while he did tell § 87(2)(b) to leave the apartment, as shown at 20:25 and 20:35 of the player's timestamp, he did not tell § 87(2)(b) that she would be arrested (Board Review 02).

§ 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Tiffany Sanchez § 87(2)(b)

§ 87(2)(b) testified that when she went into her apartment to retrieve her belongings, PO Sanchez followed her inside (Board Review 11). She did not know why PO Sanchez went into her apartment.

PO Sanchez's BWC video showed that PO Sanchez entered § 87(2)(b)'s apartment at the 14:27 minute-mark of the player's timestamp (Board Review 03). PO Sanchez asked § 87(2)(b) what she was doing, and § 87(2)(b) replied that she was getting a charger. § 87(2)(b) appears to be holding a phone charger. PO Sanchez and § 87(2)(b) talk about § 87(2)(b)'s situation with § 87(2)(b). PO Sanchez exits the apartment approximately four minutes later.

According to the 34th Precinct, PO Sanchez is on leave until 2022 and could not provide a statement to the CCRB. § 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Mohammad Khan threatened to arrest

§ 87(2)(b)

PO Khan's BWC video shows that PO Khan told § 87(2)(b) "If you don't want to leave, you're gonna get arrested," at the 54:11 minute-mark of the player's timestamp (Board Review 01). Sgt. Shea served § 87(2)(b) the newest order of protection and told her to leave. § 87(2)(b) argued with Sgt. Shea. At 1:02:00, PO Khan said, "We're not going to do this all night. Either you're going to leave, or you're going to get arrested. Which one?" § 87(2)(b) retreated into the apartment to collect her belongings. At 1:16:25, § 87(2)(b) exited the building. At 1:19:45, § 87(2)(b) asked PO Khan if he can check to see if § 87(2)(b) took any of his belongings. PO Khan replied that he can stating, "Check your room. It's your apartment." § 87(2)(b) tried his keys, but he was unable to open the door.

PO Khan testified that he told § 87(2)(b) she would be arrested because he was trying to figure out which ones were valid and that both § 87(2)(b) and § 87(2)(b) would get arrested if they did not leave (Board Review 12). PO Khan added that this was a law enforcement tactic to get § 87(2)(b) to leave.

As evidenced above, § 87(2)(b) and § 87(2)(b) both had valid orders of protection excluding them from the apartment they shared (Board Review 10).

New York Penal Law §215.50 states that a person is guilty of criminal contempt in the second degree when they engage in the intentional disobedience or resistance to the lawful mandate of a court (Board Review 15).

Patrol Guide Procedure 214-13 (BR 25) states that the authority to break and enter pursuant to purely civil process such as repossessions, evictions, and civil commitments is given to the city marshal/sheriff. The execution of a warrant of eviction is the sole responsibility of the city marshal/sheriff. The only assistance which the police must render to a marshal is the general mandate of the New York City Charter to preserve the peace and protect life and property.

§ 87(2)(g)

§ 87(2)(b) PO Khan stated that this threat of arrest was a law enforcement tactic to get § 87(2)(b) to leave the apartment. § 87(2)(g)

Allegation (G) Abuse of Authority: Sergeant Todd Shea entered § 87(2)(b)

Sgt. Shea's BWC showed that he crossed the threshold of § 87(2)(b)'s apartment when he told her that she had to leave, as seen at the 33:10 minute-mark of the player's timestamp and 21:26:17 of the hardcoded timestamp (Board Review 02). Sgt. Shea moved his entire body into the apartment at 34:44, and he remained inside until 36:33.

Sgt. Shea testified that he did not recall going into the apartment (Board Review 13). After seeing his BWC video, Sgt. Shea believed he only stood in the entryway to hold open the door. Sgt. Shea held the door open so that he could continue to speak to § 87(2)(b) since the NYPD Legal Department told him § 87(2)(b) needed to leave the premises. At some point, § 87(2)(b) asked him to enter by telling him that there were drugs in the apartment. Sgt. Shea believed § 87(2)(b) wanted officers to investigate. Sgt. Shea did not go into the apartment to investigate the drugs because that was not his purpose for being there.

PO Khan's BWC video showed that § 87(2)(b) told officers, "I need you guys to come inside and retrieve what I found in my kitchen," as shown at the 17:41 minute-mark of the player's timestamp and 20:40:58 of the hardcoded timestamp (Board Review 01). Sgt. Shea continued to speak to PO Khan about the orders of protection and did not respond to § 87(2)(b).

According to Payton v. New York (445 U.S. 573), officers are prohibited from making warrantless entry into an individual's home without consent (Board Review 16). The standard for measuring the scope of an individual's consent is that of objective reasonableness, see People v. Mitchell, 211 A.D.2d 533 (Board Review 18). In People v. Ortiz, 2001 N.Y. Misc., the court applied this standard and found that consent to some officers did not constitute an open invitation for additional police officers to enter at a later time (Board Review 19).

§ 87(2)(g)

Allegation (H) Abuse of Authority: Police Officer Mohammad Khan questioned § 87(2)(b)

Allegation (I) Abuse of Authority: Sergeant Todd Shea questioned § 87(2)(b)

Allegation (J) Abuse of Authority: Police Officer Mohammad Khan searched § 87(2)(b)

Allegation (K) Abuse of Authority: Sergeant Todd Shea searched § 87(2)(b)

§ 87(2)(b) did not make these allegations (Board Review 11). Rather, these allegations were captured in the BWC footage noted below.

PO Khan's BWC video showed that § 87(2)(b) accused § 87(2)(b) of taking his belongings as she exits the apartment, see 1:11:26 of the player's timestamp (Board Review 01). At 1:11:35, PO Khan asked, "What's in that bag?" § 87(2)(b) replied, "It's my paperwork...Look." § 87(2)(b) held up papers for the officers to see. At 1:12:09, Sgt. Shea said, "Are we allowed to check?" § 87(2)(b) answered, "Not really. I'm just showing you. Look, paperwork. My documents." At 1:13:08, PO Khan asked, "Do you have any letters that's his?" § 87(2)(b) replied that she did

not, and PO Khan asked, “Can we check?” § 87(2)(b) handed PO Khan documents from her bag. PO Khan looked at the papers and then handed them back saying, “Ok, we believe you.”

PO Khan did not have an independent recollection of asking § 87(2)(b) what was in her bag (Board Review 12). After watching his BWC video, PO Khan stated that he believed he asked because § 87(2)(b) alleged that § 87(2)(b) had his paperwork in her bag. PO Khan did not recall if he had any other reason to believe § 87(2)(b) took § 87(2)(b) paperwork. If § 87(2)(b) took § 87(2)(b) documents, that action would be a violation or a crime depending on the value of the items § 87(2)(b) took.

Sgt. Shea testified that he asked to check § 87(2)(b)'s bag because § 87(2)(b) claimed that § 87(2)(b) stole some of his property (Board Review 13). Additionally, Sgt. Shea knew that § 87(2)(b) and § 87(2)(b) had a history of taking each other's property. Sgt. Shea understood § 87(2)(b)'s response, “Not really,” to mean that it was possible she would permit the officers to check her bag. Neither Sgt. Shea nor PO Khan searched § 87(2)(b)'s bag.

According to NYPD Patrol Guide Procedure 212-11, an encounter between a civilian and a uniformed member of service conducted for the purpose of asking the civilian pointed or accusatory questions, defined as a common law right of inquiry, is conducted on the basis of “founded suspicion” that criminality is afoot. Founded suspicion of criminal activity arises when there is some present indication of criminality based on observable conduct or reliable hearsay information (Board Review 20).

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to two additional CCRB complaints and has been named as a victim in 11 allegations (Board Review 21):
 - § 87(2)(b)
 -
 -
 -
 -
- PO Khan has been a member of service for six years and has been a subject in three additional CCRB complaints and seven allegations, none of which were substantiated (Board Review 22).


§ 87(2)(g)

- Sgt. Shea has been a member of service for 10 years and has been a subject in one other CCRB complaint and one allegation which was not substantiated (Board Review 22). § 87(2)(g)
- PO Sanchez has been a member of service for six years and has been a subject in one other CCRB complaint and one allegation which was not substantiated (Board Review 22). § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) chose to mediate this complaint, § 87(2)(b). The case was returned to investigation on February 8, 2021.
- As of April 5, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 23).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 4

Investigator:		Inv. Devaney	11/12/2021
	Signature	Print Title & Name	Date

Squad Leader:	Raquel Velasquez	IM Raquel Velasquez	11/12/2021
	Signature	Print Title & Name	Date

Reviewer:			
	Signature	Print Title & Name	Date